HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 1084 (M/S) 2001
(Old No. 3255 of 1977.

1/1. Ramesh Chandra,
1/2. Devendra Kumar,
1/3. Ram Autar,
1/4. Onkar Sharma,
All sons of Sri Beni Ram,
R/o Ram Nagar, Tehsil Ram Nagar,
District- Nainital .....Plaintiff/Petitioner

Vs.

1.Board of Revenue, U.P. Allahabad,
2. Addl. Commissioner, Kumaun & Ruhelkhand Division, Nainital.
3. Smt. Mohini Devi W/o Sri Madan Singh,
R/o Village Dulepuri, Tehsil- Ram Nagar,
District Nainital. ...Defendant/Respondents

Hon'ble P.C. Verma, J.

This writ petition has been field by the petitioners seeking writ of certiorari quashing the impugned judgment and order dated 03.02.1977 passed by Board of Revenue. U.P. Allahabad and order dated 16.02.1956 passed by Addl. Commissioner Kumoun and Ruhelkhant Division. After the death of Beni Ram (The original petitioner) his legal heirs were substituted in his place.

Brief facts giving rise to the present petition are that the petitioner, namely, Beni Ram, field Revenue Suit No. 22/21 of 1961-62 under Section 180 of U.P. Tenancy Act in the Court of Judicial Officer-cum-Assistant Collector (Ist class), Kashipur against the respondent No.3 Smt. Mohini Devi for her ejectment from plot nos. 67,71, 73/1, 43,1, 40, 65 and 66 situated in village Dulepuri, Tehsil Ram Nagar, District- Nainital. The suit was filed inter-alia on the ground that the petitioner is a hereditary tenant of the plots in suit. The respondents No.3, as per the decree dated 20.03.1957, has failed to remove Chappar,

Khomchas and other constructions from the land of the petitioner, as such, per terms of the decree she is liable for ejectment from the plots in dispute. The suit was contested by the defendant/respondent No.3 on the grounds that no cause of action has arisen to the plaintiff; that according to the terms of award, she has removed her constructions from the land of plaintiff; that in default of removing the Chappar and Khomchas, the plaintiff was empowered to remove the constructions through court; that the defendant has been in continuous possession of the land for last 22 years. On the pleadings of the parties issues were framed. The trial court adduced oral and documentary evidence of the parties and after hearing learned counsel for both the parties; suit of plaintiff for ejectment was decreed. Aggrieved with the judgment of the trial court dated 08.05.1962, the defendant filed appeal No. 24 of 1961-62 before the commissioner. The Addl. Commissioner has allowed the appeal and dismissed the suit of the plaintiff. Therefore, the plaintiff preferred the Second Appeal No. 16 of 1962-63 before the Board of Revenue, who dismissed the appeal on 03.02.1977.

Heard Sri V.K. Bisht, learned counsel for the petitioner and learned Standing Counsel for the respondents and perused the judgments passed by the courts below.

Perusal of the judgment of first appellate court shows that the decree was a compromise decree and condition given therein was not legal under Section 74 of the Contract Act. The defendant is continuing in possession over the land and she continues to be its tenant. The condition, which imposed in the compromise decree was not legal and was not binding u/s 74 of the

Contract Act. The judgment was upheld in the Second Appeal. I am convinced with the findings of appellate courts. The judgment passed by the Addl. Commissioner and that of Board of Revenue are affirmed. Writ petition has no merit and is liable to be dismissed.

Accordingly, the writ petition is dismissed. No order as to costs.

(P.C. Verma, J.)

December 17,2003:
NCM: